

Order

Michigan Supreme Court
Lansing, Michigan

April 5, 2011

Robert P. Young, Jr.,
Chief Justice

ADM File No. 2004-08

Michael F. Cavanagh
Marilyn Kelly
Stephen J. Markman
Diane M. Hathaway
Mary Beth Kelly
Brian K. Zahra,
Justices

Amendment of Rule 8.126
of the Michigan Court Rules

On order of the Court, notice of the proposed changes and an opportunity for comment in writing and at a public hearing having been provided, and consideration having been given to the comments received, the following amendment is adopted, effective September 1, 2011.

[The present language is amended as indicated below by underlining
for new text and strikeover for text that has been deleted.]

Rule 8.126 Temporary Admission to the Bar

(A) Temporary Admission. Any person who is licensed to practice law in another state or territory, or in the District of Columbia, of the United States of America, or in any foreign country, and who is not disbarred or suspended in any jurisdiction, and who is eligible to practice in at least one jurisdiction, may be permitted to appear and practice in a specific case in a court, ~~or~~ before an administrative tribunal or agency, or in a specific arbitration proceeding in this state when associated with and on motion of an active member of the State Bar of Michigan who appears of record in the case. An out-of-state attorney may appear and practice under this rule in no more than five cases in a 365-day period. Permission to appear and practice is within the discretion of the court, ~~or~~ administrative tribunal or agency, or arbitrator and may be revoked at any time for misconduct. For purposes of this rule, an out-of-state attorney is one who is licensed to practice law in another state or territory, or in the District of Columbia, of the United States of America, or in a foreign country and who is not a member of the State Bar of Michigan.

(1) Procedure.

(a) Motion. An attorney seeking temporary admission must be associated with a Michigan attorney. The Michigan attorney with whom the out-of-state attorney is associated shall file with the court, ~~or~~ administrative tribunal or agency, or arbitrator an appearance and

a motion that seeks permission for the temporary admission of the out-of-state attorney. The motion shall be supported by a current certificate of good standing issued by a jurisdiction where the out-of-state attorney is licensed and eligible to practice and an affidavit of the out-of-state attorney seeking temporary admission, which affidavit shall verify

(i) the jurisdictions in which the attorney is or has been licensed or has sought licensure;

(ii) the jurisdiction where the attorney is presently eligible to practice;

~~(ii)~~(iii) that the attorney is not disbarred, or suspended in any jurisdiction, and is not the subject of any pending disciplinary action, and that the attorney is licensed and is in good standing in all jurisdictions where licensed; and

~~(iii)~~(iv) that he or she is familiar with the Michigan Rules of Professional Conduct, Michigan Court Rules, and the Michigan Rules of Evidence.

The out-of-state attorney must attach to the affidavit copies of any disciplinary dispositions, and a copy of the acknowledgment letter supplied by the State Bar of Michigan showing that the required fee has been paid. The motion shall include an attestation of the Michigan attorney that the attorney has read the out-of-state attorney's affidavit, has made a reasonable inquiry concerning the averments made therein, believes the out-of-state attorney's representations are true, and agrees to ensure that the procedures of this rule are followed. The motion shall also include the addresses of both attorneys.

(b) The Michigan attorney shall send a copy of the motion and supporting affidavit to the Attorney Grievance Commission. Within seven days after receipt of the copy of the motion, the Attorney Grievance Commission must notify the court, ~~or~~ administrative tribunal or agency, or arbitrator and both attorneys whether the out-of-state attorney has been granted permission to appear temporarily in Michigan within the past 365 days, and, if so, the number of such appearances. ~~The notification shall also indicate whether a fee is due if the court or administrative tribunal or agency grants permission to appear. The court or administrative tribunal or agency~~

~~shall not enter an~~ No order or other writing granting permission to appear in a case shall be entered by a court, administrative tribunal or agency, or arbitrator until the notification is received from the Attorney Grievance Commission.

- (c) Order. Following notification by the Attorney Grievance Commission, if the out-of-state attorney has been granted permission to appear temporarily in fewer than 5 cases within the past 365 days, the court, ~~or administrative tribunal or agency, or arbitrator~~ may enter an order granting permission to the out-of-state attorney to appear temporarily in a case. If an order or other writing granting permission is entered, the court, administrative tribunal or agency, or arbitrator shall send a copy of the order or writing to the Michigan attorney, and the out-of-state attorney, and the. ~~The Michigan attorney in turn shall send a copy of the order to the Attorney Grievance Commission.~~

- (d) Fee. ~~If a fee is due, the order shall state that the appearance by the out of state attorney is effective on the date the attorney pays a~~ In each case in which an out-of-state attorney seeks temporary admission in Michigan, the attorney must pay a fee equal to the discipline and client-protection portions of a bar member's annual dues must be paid. If a fee is not due, the order shall indicate the effective date of the appearance. The attorney is required to pay the fee only once in any period between October 1 and September 30. The discipline portion of the fee shall be paid to the State Bar of Michigan for allocation to the attorney discipline system, and the client-protection portion shall be paid to the State Bar of Michigan for allocation to the Client Protection Fund. Upon receipt of payment of the fee, the State Bar of Michigan shall within three business days send to the out-of-state attorney an acknowledgment letter that the fee has been paid.

- (e) By seeking permission to appear under this rule, an out-of-state attorney consents to the jurisdiction of Michigan's attorney disciplinary system.

Staff Comment: Michigan's pro hac vice rule, MCR 8.126, has been in place since 2008, and these changes reflect revisions to update the rule that were adopted at the request of the AGC and the State Bar of Michigan. The revisions include a requirement that the fee be charged for each request for pro hac vice admission, that the court that grants the motion send a copy of the order to the AGC (instead of requiring that the

Michigan attorney send the copy to the AGC), that the rule specifically include an attorney's temporary admission for arbitration proceedings, and that the fee be required to be paid before an order enters.

The staff comment is not an authoritative construction by the Court.



I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

April 5, 2011

Corbin R. Davis

Clerk